

31A-2-203 Examinations and alternatives.

- (1)
- (a) When the commissioner determines that information is needed about a matter related to the enforcement of this title, the commissioner may examine the affairs and condition of:
 - (i) a licensee under this title;
 - (ii) an applicant for a license under this title;
 - (iii) a person or organization of persons doing or in process of organizing to do an insurance business in this state; or
 - (iv) a person who is not, but is required to be, licensed under this title.
 - (b) When reasonably necessary for an examination under Subsection (1)(a), the commissioner may examine:
 - (i) so far as it relates to the examinee, an account, record, document, or evidence of a transaction of:
 - (A) the insurer or other licensee;
 - (B) an officer or other person who has executive authority over or is in charge of any segment of the examinee's affairs; or
 - (C) an affiliate of the examinee; or
 - (ii) a third party model or product used by the examinee.
 - (c)
 - (i) On demand, an examinee under Subsection (1)(a) shall make available to the commissioner for examination:
 - (A) the examinee's own account, record, file, document, or evidence of a transaction; and
 - (B) to the extent reasonably necessary for an examination, an account, record, file, document, or evidence of a transaction of a person described under Subsection (1)(b).
 - (ii) Except as provided in Subsection (1)(c)(iii), failure to make an item described in Subsection (1)(c)(i) available is concealment of records under Subsection 31A-27a-207(1)(e).
 - (iii) If an examinee is unable to obtain an account, record, file, document, or evidence of a transaction from a person described under Subsection (1)(b), that failure is not concealment of records if the examinee immediately terminates the relationship with the other person.
 - (d)
 - (i) The commissioner or an examiner may not remove an account, record, file, document, evidence of a transaction, or other property of an examinee from the examinee's offices unless:
 - (A) the examinee consents in writing; or
 - (B) a court grants permission.
 - (ii) The commissioner may make and remove a copy or abstract of the following described in Subsection (1)(d)(i):
 - (A) an account;
 - (B) a record;
 - (C) a file;
 - (D) a document;
 - (E) evidence of a transaction; or
 - (F) other property.
- (2)
- (a) Subject to the other provisions of this section, the commissioner shall examine as needed and as otherwise provided by law:
 - (i) every insurer, both domestic and nondomestic;
 - (ii) every licensed rate service organization; and

- (iii) any other licensee.
- (b) The commissioner shall examine an insurer, both domestic and nondomestic, no less frequently than once every five years, but the commissioner may use in lieu an examination under Subsection (4) to satisfy this requirement.
- (c) The commissioner shall revoke the certificate of authority of an insurer or the license of a rate service organization that has not been examined, or submitted an acceptable in lieu report under Subsection (4), within the past five years.
- (d)
 - (i) Any 25 persons who are policyholders, shareholders, or creditors of a domestic insurer may by verified petition demand a hearing under Section 31A-2-301 to determine whether the commissioner should conduct an unscheduled examination of the insurer.
 - (ii) Persons demanding the hearing under this Subsection (2)(d) shall be given an opportunity in the hearing to present evidence that an examination of the insurer is necessary.
 - (iii) If the evidence justifies an examination, the commissioner shall order an examination.
- (e)
 - (i) If the board of directors of a domestic insurer requests that the commissioner examine the insurer, the commissioner shall examine the insurer as soon as reasonably possible.
 - (ii) If the examination requested under this Subsection (2)(e) is conducted within two years after completion of a comprehensive examination by the commissioner, costs of the requested examination may not be deducted from premium taxes under Section 59-9-102 unless the commissioner's order specifically provides for the deduction.
- (f) A bail bond surety company, as defined in Section 31A-35-102, is exempt from:
 - (i) the five-year examination requirement in Subsection (2)(b);
 - (ii) the revocation under Subsection (2)(c); and
 - (iii) Subsections (2)(d) and (2)(e).
- (3)
 - (a) The commissioner may order an independent audit or examination by one or more technical experts, including a certified public accountant or actuary:
 - (i) in lieu of all or part of an examination under Subsection (1) or (2); or
 - (ii) in addition to an examination under Subsection (1) or (2).
 - (b) An audit or evaluation under this Subsection (3) is subject to Subsection (5), Section 31A-2-204, and Subsection 31A-2-205(4).
- (4)
 - (a) In lieu of all or a part of an examination under this section, the commissioner may accept the report of an examination made by:
 - (i) the insurance department of another state; or
 - (ii) another government agency in:
 - (A) this state;
 - (B) the federal government; or
 - (C) another state.
 - (b) An examination by the commissioner under Subsection (1) or (2) or accepted by the commissioner under this Subsection (4) may use:
 - (i) an audit completed by a certified public accountant; or
 - (ii) an actuarial evaluation made by an actuary approved by the commissioner.
- (5)
 - (a) An examination may be comprehensive or limited with respect to the examinee's affairs and condition. The commissioner shall determine the nature and scope of an examination, taking into account all relevant factors, including:

- (i) the length of time the examinee has been licensed in this state;
 - (ii) the nature of the business being examined;
 - (iii) the nature of the accounting or other records available;
 - (iv) one or more reports from:
 - (A) independent auditors; and
 - (B) self-certification entities; and
 - (v) the nature of examinations performed elsewhere.
 - (b) The examination of an alien insurer is limited to one or more insurance transactions and assets in the United States, unless the commissioner orders otherwise after finding that extraordinary circumstances necessitate a broader examination.
- (6) To effectively administer this section, the commissioner:
- (a) shall:
 - (i) maintain one or more effective financial condition and market regulation surveillance systems including:
 - (A) financial and market analysis; and
 - (B) a review of insurance regulatory information system reports;
 - (ii) employ a priority scheduling method that focuses on insurers and other licensees most in need of examination; and
 - (iii) use examination management techniques similar to those outlined in the Financial Condition Examination Handbook of the National Association of Insurance Commissioners; and
 - (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may make rules pertaining to:
 - (i) a financial condition and market regulation surveillance system; and
 - (ii) annual financial reporting requirements similar to those outlined in the Annual Financial Reporting Model Regulation of the National Association of Insurance Commissioners.

Amended by Chapter 349, 2009 General Session